

ARIZONA SUPREME COURT
Committee on Civil Rules of Procedure in Limited Jurisdiction Courts

Minutes
 March 31, 2011

Members present:

Hon. Paul Julien, Chair
 Hon. Timothy Dickerson
 Hon. Maria Felix
 Hon. Gerald Williams
 Mary Blanco
 David Hameroff
 Stanley Hammerman
 William Klain
 George McKay
 David Rosenbaum
 Anthony Young

Members present by telephone:

Hon. Jill Davis, by Valerie Winters, proxy
 Emily Johnston
 Nathan Jones

Members not present:

Hon. Hugh Hegyi
 Roger Wood

Guests:

Linda Grau
 Theresa Barrett

Staff: Mark Meltzer, Tama Reily

1. Call to Order; approval of meeting minutes. The Chair called the meeting to order at 10:08 a.m. The Chair informed the members of the recent appointment of Maricopa County Superior Court Judge Hugh Hegyi to the Committee.

The members then reviewed the March 2, 2011 meeting minutes.

Motion: A motion was made and seconded to approve the March 2, 2011 meeting minutes. The motion was seconded. The motion carried unanimously. **RCiP.LJC 11-003**

2. Review of materials. The Chair noted two statutes and an Arizona Supreme Court opinion:

- A.R.S. § 22-201. This statute provides that justice courts have “exclusive original jurisdiction of civil suits when the amount involved is ten thousand dollars or less.”
- A.R.S. § 22-406. This statute permits a city or town to bring a civil action in a municipal court to recover a penalty or forfeiture. The statute provides that the action “shall be brought and conducted as civil actions in justice of the peace courts.” The members discussed whether the LJ civil rules being considered by this Committee would be applicable to these cases. Several members felt that the rules would apply, and stated reasons for their beliefs, but the consensus of the Committee was that this is a question that did not need to be addressed at this time.

- *Preston v. Kindred*, a March 24, 2011 opinion, involved an interpretation of Rule 17(a) of the Arizona Rules of Civil Procedure. The opinion includes principles for interpreting court rules.

3. Presentation by staff regarding Rules 1 and 2. Staff presented Rules 1 and 2 as they were modified following member comments at the March 2nd meeting. Staff highlighted the following changes:

- Staff's draft Rule 2 was deleted in its entirety because it incorporated provisions from other rules (Rules 4(b), 10(d), 11, 80(i), and 11(a)) that have been assigned to the workgroups.
- The consensus of the members was to use the word "lawsuits" in these rules rather than the word "cases".
- A provision was also added that would permit any Arizona Rule of Civil Procedure that had not been incorporated in the LJ rules to still be "invoked" by a party or by the court.
- A Committee comment was added for further guidance in interpreting the LJ rules.

Members discussed the provision that would allow a rule to be invoked. Among the comments were these:

- How would a party invoke a rule? Would it be done by a motion? What would be the standard that a litigant would need to show in order to invoke a rule?
- Invoking a rule might promote surprise and may disadvantage litigants. Such a provision runs contrary to the premise of leveling the playing field for justice court litigants.
- If a complex Arizona Rule of Civil Procedure could be invoked, attorneys would make blanket requests to invoke it at the onset of every case, to the detriment of self-represented parties.
- Some judges would allow rules to be invoked, others wouldn't, and this could create disparity among the courts and possibly encourage forum shopping.

It was also pointed out that while draft Rule 1 excluded small claims cases from its scope, there are no special rules for defaults in small claims, so other rules of civil procedure, such as the ten-day provision of existing Rule 54, are customarily applied in small claims cases. The Chair noted that while small claims cases are not within the charge to this Committee, this Committee should not overlook any impact these proposed rules might have on small claims proceedings.

Another member noted that cross-reference tables would be useful when discussing or using these rules. One table should reference any new LJ rule to the existing rule, and another table

should do the reverse. The issue of rule numbering was also mentioned. Comments were made that sequential numbering would best serve self-represented litigants, while maintaining the existing rule numbering scheme would be helpful for attorneys. It was noted that if new rules are ultimately adopted, training would be available for all stakeholders to educate them about these rule changes.

Motion: A motion was made to defer the issues about rule numbering and invoking rules until after the substance of the proposed rules had been drafted. The motion was seconded. The motion passed unanimously. **RCiP.LJC 11-004**

4. Presentation by workgroup #1. Judge Dickerson began by noting the approach used by workgroup #1 on Rules 3 through 25. These rules were divided among the workgroup member. Each member then presented a draft of their assigned rules to the workgroup, and the draft rules were discussed and revised by the group. In analyzing which rules should apply in justice courts, the workgroup members used an “80/20” rule: would the rule apply in at least eighty percent of the cases, or not apply in fewer than twenty percent of the cases? There were also deviations from this norm, such as “90/10” or “95/5” scenarios. If the workgroup decided to include a particular rule, it was worded to maximize its understanding by self-represented litigants. Some legal words, however, were considered as “terms of art”, and these terms were maintained to preserve their authority and nuance. After the workgroup meetings, staff drafted a “combined” set of rules that followed a sequence of what a self-represented litigant would want to know when filing a lawsuit.

Ms. Blanco presented on Rule 3 through 6. A provision on formatting was included in this subset, as was a provision that litigants would need to provide the court with mailing envelopes when submitting a proposed order. A provision was also included that would permit a plaintiff up to a year to serve the summons and complaint. It was noted that all methods of service provided in the existing rules had been maintained in the corresponding LJ rule. Staff suggested including the hour as well as the day on the filing stamp to harmonize with the practice in AZ Turbo Court. A member suggested that using the term “place of the lawsuit” might be more understandable than “venue”. Another member believed that the rules should clarify the distinction between “service” of process and “service” of subsequent documents, and that this distinction would benefit court clerks as well as litigants.

Judge Dickerson presented a draft of Rules 7 through 10. The proposed rules for pleading were simplified. Arcane defenses were deleted, such as a demurrer that’s provided in Rule 7(b). Provisions for a cover sheet in Rule 8(h), and for a complex civil program in Rule 8(i), were removed. Rule 9, which concerns pleading of special matters, was also redacted. The actual language used in existing Rule 8(c) for affirmative defenses, although stated in legal jargon, was preserved. A provision for fictitious defendants was included in this subset.

Mr. Hameroff discussed Rules 11 through 15. These rules were simplified and shortened. He noted that he did not agree with a suggestion in staff’s combined version that every pleading be verified, because if a pleading is signed, it’s supposed to be true even without a verification. Mr. Hameroff deferred to a version of Rule 15(c) that was submitted by Mr. Klain.

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Mr. Young presented Rules 17 through 19. His proposed rules simplified certain provisions and omitted others. For example, portions of Rule 17(b) concerning title to real property were omitted in light of the lack of authority of LJ courts to hear such cases. Another proposed rule, Rule 19(a), cross-referenced an existing rule of procedure.

Mr. Klain gave a presentation of revisions to Rules 20 through 25. Rule titles as well as rule contents were simplified. The word “events” was substituted for “occurrences”, although this change may compromise the well-established legal phrase of “transaction or occurrence.” Proposed rules for interpleader and intervention referred to the corresponding, existing rules. Rules concerning class actions and derivative actions were omitted. The rule for substitution of parties was revised.

Judge Dickerson concluded workgroup #1’s presentation by offering the following suggestions:

- Workgroups should consider the “80/20” rule, or variations of that rule.
- Workgroups should use a common format when presenting proposed rules.
- Proposed rules should be presented with the full text of the corresponding, existing rule.
- Workgroups should make the full Committee aware of what portion of an existing rule was omitted, and what language was added.

A lunch recess was taken.

5. Discussion of the rules presented by workgroup #1. The Committee agreed to review the first 25 rules by using staff’s “combined” version of these rules. The consensus of the members was that they would not vote on whether to adopt any individual rule until all of the proposed LJ rules had been presented.

Shortly after beginning the review, the members expressed comments about the approach taken in the combined version. The comments included the following:

- The Committee needs to be clear about whether an existing rule does or does not apply in justice courts. If a rule has not been expressly included in the LJ rules, and if it has not been included by reference, there should not be room for guessing about whether that rule may still be invoked or whether the rule might still be utilized in LJ courts.
- It might be problematic for attorneys and judges if the rules were renumbered without specifying which of the existing rules don’t apply. On the other hand, it would be easier if self-represented litigants could read only fundamental rules that continue to apply. Self-represented litigants may not understand the meaning of “incorporated by reference.”
- There are reasons why specific individual rules exist in the Arizona Rules of Civil Procedure, even if the reasons or scenarios don’t occur frequently. As an example, executors may not frequently file cases in the superior court, but for the occasions that

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they do, there is an existing, governing rule. An executor should have a corresponding procedural rule for appearing in an LJ court. In order to file a lawsuit in a justice court, an executor should not be required to state a compelling reason why a superior court rule should be invoked in LJ court; the LJ rules should have such a provision.

- The Committee needs to discuss every rule and every subsection and then decide if it does or does not apply in justice court. The Committee needs to go through the existing rules in the order that they appear in the rule book.
- The Committee should draft comprehensive correlation tables, such as the example at pages 6 through 8 of the 2011 volume of the Arizona Rules of Court.

The members then returned to existing Rule 3, and discussed the seminal question of whether this rule would apply in justice courts. The members repeated this question of whether an existing rule should apply in justice court proceedings for Rules 4 through 15, and for every subsection of each of those rules.

6. The roadmap. At the next meeting, the members will continue their review process for the remaining rules (Rules 17 through 25). It was suggested that members of workgroup #2 follow a similar process during their meetings. Staff will prepare a summary table of the decisions made today by the Committee on Rules 3 through 15. The summary table will be updated after future meetings.

Judge Williams agreed to participate in workgroup #2 so that the workgroup will have five members.

6. Call to the Public; Adjourn. There was no response to a call to the public. The meeting was adjourned at 3:07 p.m.

The next meeting date is **Wednesday, April 20, 2011.**